

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 99-11874

DIVISION "I"

SECTION 7

REGIONAL TRANSIT AUTHORITY

VERSUS

MARINA KAHN, IN HER OFFICIAL CAPACITY AS
DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS AND
COURTLAND CROUCHET, IN HIS OFFICIAL CAPACITY AS
COLLECTOR OF REVENUE OF THE CITY OF NEW ORLEANS

FILED: _____

DEPUTY CLERK

FINAL JUDGMENT AND DECREE

This matter came before the Court on the date scheduled for the trial on the merits, June 2, 2000, on joint motion of the Regional Transit Authority (Plaintiff), Marina Kahn and Courtland Crouchet in their official capacities, respectively, as Director of Finance and Collector of Revenue of the City of New Orleans (Defendants) (appearing herein to assert their official interest as the tax collectors for local sales taxes in Orleans Parish and the interest of the municipal corporation of which they are officers), the Greater New Orleans Hotel and Motel Association, and its privies, Days Inn/New Orleans, Doubletree Hotel New Orleans, Embassy Suites Hotel New Orleans, Four Points Hotel, Hilton New Orleans Riverside, Holiday Inn Select, The Inn on Bourbon, Maison Dupuy Hotel, Provincial Motels, Inc., Radisson Hotel New Orleans, The Warwick Corporation d/b/a Comfort Inn Downtown, Windsor Court Hotel, and Wyndham Riverfront Hotel and the New Orleans Tourism Marketing Corporation (Intervenors), each party appearing herein through their respective undersigned counsel. For the purposes of this Final Judgment and Decree, the Court's use of the word "party" or "parties" shall include the plaintiff, defendants and each of the intervenors and their privies.

Also before the Court is the Joint Motion for Leave of Court to Intervene, Waiver of Service of Process and Citation, and Answer in which all parties concur and the Petition of Intervention of the New Orleans Tourism Marketing Corporation, in which all parties concur.

IT IS ORDERED, ADJUDGED AND DECREED AND THE COURT HEREBY
DECLARES THAT:

1) In a referendum election held on January 19, 1985 and called by Regional Transit Authority Resolution 84-19 (hereinafter the "1984 Resolution"), the electorate of Orleans Parish voted to approve a proposition to authorize the Regional Transit Authority ("RTA") to levy and collect a general sales and use tax (hereinafter the "RTA Tax") as defined by Title 47 of the Louisiana Revised Statutes without any exclusion or exemption from the scope of the levy other than the exclusions and exemptions defined by state law; however, the proposition (hereinafter the "Proposition") approved by the electorate included an additional clause that reads as follows:

provided that the occupancy of hotel rooms, as defined in Section 47(M) of Article XIV of the Louisiana Constitution of 1921 and made statutory by the provisions of Article XIV, Section 16 of the Louisiana Constitution of 1974, shall be exempt from the one percent (1%) additional tax imposed herein; ...

hereinafter the "Hotel Occupancy Exemption Clause".

2) The Hotel Occupancy Exemption Clause is grammatically and functionally distinct and severable from the provisions of the initial clause (hereinafter the "Tax Levy Clause") of said Proposition, which reads as follows:

FOR The proposed Regional Transit Authority levy and collection of an additional one percent (1%) sales and use tax upon the sale at retail, the use, the lease or rental, the consumption, and the storage for use or consumption; of tangible personal property and on sales of services in the Parish of Orleans, all as presently defined in Louisiana Revised Statutes (R.S. 47:301, *et seq.*) and to further authorize the proceeds to be dedicated to transit and transit-related purposes; ...

3) The RTA Tax authorized by the Tax Levy Clause applied to the furnishing of hotel rooms, as provided in La. R.S. 47:301(6) and (14).

4) The Hotel Occupancy Exemption Clause of the Proposition included in the 1984 Resolution and approved by the electorate on January 19, 1985, and the related provisions of Section (GG) of the Regional Transit Authority Resolution designated as Motion 85-53 (hereinafter the "1985 Resolution") are and have been, *ab initio*, unlawful, beyond the legislative power and authority of the RTA and the Orleans Parish electorate, in conflict with state law, *ultra vires*, and inconsistent with state law, and are null void and unenforceable, without adverse affect upon the validity of the Tax Levy Clause, which is hereby found to be valid and enforceable.

5) The provisions of the Tax Levy Clause are and have been valid *ab initio*, and are

enforceable by the RTA and its tax collection agents, the defendants herein.

6) The provisions of the valid Tax Levy Clause and the provisions of the Hotel Occupancy Exemption Clause hereby declared null and void are volitionally severable from each other; the provisions of the valid Tax Levy Clause can and should be enforced without regard to the null and invalid Hotel Occupancy Exemption Clause; and the Tax Levy Clause is declared lawful and severed from the invalid Hotel Occupancy Exemption Clause, and the Tax Levy Clause has full legal force and effect; and the Hotel Occupancy Exemption Clause is declared null and void and is severed from the Tax Levy Clause and stricken from the Proposition.

7) The electorate would have voted for the general sales tax authorized by the approval of the Tax Levy Clause of the Proposition whether or not the Proposition included (or did not include) the invalid and null Hotel Occupancy Exemption Clause; and approval of the Tax Levy Clause constitutes full and complete approval of the electors of Orleans Parish of a general sales and use tax as defined in La. R.S. 47:301 *et seq.*, in full satisfaction of the requirements of La. R.S. 48:1664. Even considering the Proposition set forth in 1984 Resolution without regard to any evidence that was introduced or which might have been adduced by the parties, and interpreting the Proposition on the basis of its language alone, according to the rules applied to statutes and ordinances, the Court finds and declares that the Tax Levy Clause of the 1985 Proposition and the null and void Hotel Occupancy Exemption Clause are clearly grammatically, functionally and volitionally severable.

8) The defendants, Kahn and Crouchet and their successors, in their official capacities, have a legal duty to enforce and must enforce the Tax Levy Clause and have a legal duty to enforce and must enforce all valid provisions of the 1985 Resolution as amended by Resolution 99-033 (hereinafter the "1999 Resolution"), without regard to the clauses declared null and severable hereinabove.

9) Those Intervenor and their privies; and all other persons and entities who are "dealers" operating "hotels" in Orleans Parish (as the terms in "dealers" and "hotels" are defined in La. R.S. 47:301 *et seq.*), have a duty to collect the RTA Tax from guests who are furnished sleeping rooms in their hotels and to report and remit same to the RTA through the defendant City tax collectors and/or to report and pay the RTA tax on the furnishing of sleeping rooms in their hotels to the RTA through the defendant City tax collectors in accordance with La. R.S. 47:301(14)(a) *et*